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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

List of issues prior to submission of the third periodic report of Japan, due in 2017*

The Committee against Torture, at its thirty-eighth session (A/62/44, paras. 23 and 24), established an optional procedure which consists in the preparation and adoption of a list of issues to be transmitted to the State party concerned prior to the submission of its periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

Articles 1 and 4

1. With reference to the Committee's previous concluding observations (paras. 7 and 8),[1] please indicate whether the State party has taken any measures: (a) to amend its legislation to include a distinct offence of torture that fully incorporates article 1 of the Convention; and (b) to ensure that acts amounting to torture and ill-treatment are not subject to a statute of limitations.

Article 2[2]

2. With reference to the Committee's previous concluding observations (para. 10), and to the concluding observations of the Human Rights Committee (CCPR/C/JPN/CO/6, para. 18), please provide updated information on the measures taken to abolish or revise the

* Adopted by the Committee at its fifty-fourth session (20 April–15 May 2015).

[1] Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, published under the symbol CAT/C/JPN/CO/2.

[2] The issues raised under article 2 could also be addressed under other articles of the Convention, including article 16. Paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties reads: "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. ... In practice, the definitional threshold between ill-treatment and torture is often not clear." See also chapter V of the same general comment.

Daiyo Kangoku (substitute detention) system in relation to pretrial detention in order to bring it into full compliance with articles 2 and 16 of the Convention.[3] In that regard:

(a) Please include information on the measures taken by the State party to put in place adequate safeguards against torture and ill-treatment of persons held in pretrial detention, including the right to have access to legal aid and to communicate confidentially with a lawyer from the moment of arrest and throughout the interrogation process, and to be presented to a judge promptly following deprivation of liberty;

(b) Please indicate if the State party has taken measures, through the Special Committee of the Legislative Council under the Ministry of Justice or otherwise, to reform the criminal justice system in order to: (i) limit the maximum amount of time that detained persons can be held in police custody; (ii) promote alternatives to detention, including the possibility of release on bail; (iii) ensure that the functions of investigation and detention carried out by the police are separated in practice; and (iv) ensure that persons held in pretrial detention have access to an effective complaints mechanism that prompts independent investigations of any allegations of torture or ill-treatment;

(c) Please indicate any other measures taken to prevent and monitor the implementation of safeguards against torture and ill-treatment, including whether the State party intends to ensure that all interrogations are videotaped;

(d) Please also comment on concerns raised by non-governmental organizations that the *Daiyo Kangoku* system allegedly continues to encourage the practice of torture and other ill-treatment by police seeking to extract confessions from detained persons in the course of interrogations. Please indicate whether the State party has investigated those allegations and, if so, what the results were.

3. With reference to the Committee's previous concluding observations (para. 16), please provide information on progress made in the establishment of a national human rights institution with a broad mandate that is fully compliant with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).[4]

4. In the light of previous recommendations made by the Committee (para. 20) and the Committee on the Elimination of Discrimination against Women (CEDAW/C/JPN/CO/6, paras. 31–34), please provide information on the measures taken to prevent and prosecute all forms of gender-based abuse, including domestic violence, incest and rape. Please indicate whether the crime of sexual violence can be prosecuted without the requirement of a complaint by the victim. Please indicate the measures taken to address the issues of violence against migrant, minority and indigenous women (see CERD/C/JPN/CO/7-9, para.17).

5. In the light of the Committee's previous concluding observations (para. 19) concerning the issue of victims of practices of military sexual slavery during the Second World War (the so-called "comfort women") and its general comments No. 2 (2007) on implementation of article 2 by States parties and No. 3 (2012) on implementation of article 14 by States parties, please provide information on legislative, administrative and other measures taken to find a victim-centred response to the issue.[5] Please indicate whether the

[3] See A/HRC/22/14/Add.1, para.147.116.

[4] See also CCPR/C/JPN/CO/6, para.7; CEDAW/C/JPN/CO/6, paras. 23 and 24; CERD/C/JPN/CO/7-9, para. 9.

[5] See CERD/C/JPN/CO/7-9, para. 18; CCPR/C/JPN/CO/6, para. 14; E/C.12/JPN/CO/3, para. 26; CEDAW/C/JPN/CO/6, paras. 37 and 38; A/HRC/7/3, para. 65; A/HRC/22/14, paras. 147.145–

State party has taken measures to address the Committee's recommendations concerning the following measures with respect to articles 1, 2, 4, 10, 14 and 16 of the Convention and, specifically:

(a) To publicly acknowledge legal responsibility for the crimes that amount to sexual slavery;

(b) To disclose related materials and evidence, undertake impartial and effective investigations into allegations, prosecute those responsible and, if they are found guilty, punish perpetrators with appropriate penalties;

(c) To provide victims and their families with full and effective redress and reparation, including compensation, satisfaction and the means for as full a rehabilitation as possible;

(d) To educate the general public about the issue, including adequate references in all history textbooks, and ensure that public officials condemn statements aimed at justifying those abuses or insulting or stigmatizing the victims.

6. In the light of the Committee's previous concluding observations (para. 21) and the recommendations made by the Special Rapporteur on trafficking in persons, especially women and children following her visit to Japan in 2009 (A/HRC/14/32/Add.4), please provide data on the number of persons arrested and prosecuted for trafficking, and on the number of individuals identified as victims of trafficking since the consideration of the State party's last periodic report. Please also provide updated information on the measures taken to ensure that:[6]

(a) Victims of trafficking are provided with adequate assistance for their physical and psychological recovery;

(b) Clear procedures for identifying victims of trafficking are set out and specialized training is provided to relevant public officials;

(c) Perpetrators of trafficking in persons are prosecuted and punished with appropriate penalties.

Article 3

7. In the light of the Committee's previous concluding observations (para. 9), please describe any measures taken by the State party to ensure that all persons applying for international protection are given access to fair procedures for determination of eligibility and for protection against refoulement, and to an independent appeal mechanism.

8. Please provide statistical data collected annually since the consideration of the State party's previous report and disaggregated by sex, age and country of origin, on:

(a) The number of registered asylum requests and whether the asylum seekers were adults or minors;

(b) The number of applicants whose requests were granted on grounds that they had been tortured or risked being tortured if returned to their country of origin;

(c) The number of appeals challenging a decision of expulsion, return or deportation, average processing time and their outcomes;

147.148; A/HRC/22/14/Add.1, paras. 147.145–147.148; E/CN.4/2006/16/Add.2, paras. 59 and 82; A/HRC/27/NGO/48.

[6] CERD/C/JPN/CO/7-9, para. 16; CCPR/C/JPN/CO/6, para.15; CEDAW/C/JPN/CO/6, paras. 31–34.

(d) The number of persons who have been returned, deported or extradited, the grounds for such action and the countries to which such persons were returned;

(e) The number of cases, if any, in which the State party relied on "diplomatic assurances" against torture in the context of expulsion, return or deportation and the countries to which such persons were returned.

Articles 5 and 7

9. Since the consideration of the previous report, please indicate whether the State party has rejected, for any reason, any request for extradition by another State of an individual suspected of having committed an offence of torture and has started prosecution proceedings as a result. If so, please provide information on the status and outcome of such proceedings.

Article 10

10. With reference to the Committee's previous concluding observations (para. 17), please provide information on:

(a) Educational and training programmes developed and implemented by the State party to ensure that law enforcement personnel, immigration officials, penitentiary staff as well as all members of the judiciary and prosecutors are fully aware of the State party's obligations under the Convention;

(b) The development and implementation of a methodology to assess the effectiveness and impact on the incidence of cases of torture of relevant training and educational programmes;

(c) Measures taken to ensure that relevant medical professionals are systematically provided with thorough and practical training in the application of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

Article 11

11. In the light of the Committee's previous concluding observations (para. 11), please indicate if the State party has established rules limiting the permissible length of interrogations, with appropriate sanctions for non-compliance, and whether the State party has taken steps toward developing standard investigation practices to reduce reliance on confessions as the primary or central element of proof in criminal proceedings. Please also provide any other relevant information on any new interrogation rules, instructions, methods and practices, as well as arrangements for the custody of persons subject to any form of arrest, detention or imprisonment, that may have been introduced since the consideration of the last periodic report. Please also indicate the frequency with which these are reviewed.

Articles 12 and 13

12. In the light of the Committee's previous concluding observations (para. 12), please provide information on progress made in establishing an independent and effective complaints body and ensuring prompt, impartial and full investigations into all allegations of torture and ill-treatment committed by public officials. What measures have been taken to protect complainants against reprisals as a consequence of their complaint? Please provide information, including disaggregated statistics, on the number of complaints filed against public officials for torture and ill-treatment as well as information about the results of the proceedings, at both the penal and disciplinary levels.

13. With reference to the Committee's previous concluding observations (para. 24), please provide detailed statistical data, disaggregated by crime committed, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on related investigations, prosecutions, convictions, and on the penal or disciplinary sanctions applied. What measures have been taken to establish an effective system to compile such statistical data?

Article 14

14. In the light of the Committee's previous concluding observations (paras.18 and 19), as well as the Committee's general comment No. 3 (2012) on the implementation of article 14 by States parties, please provide information on:

(a) Redress and compensation measures ordered by the courts and actually provided to victims of torture, or to their families, since the consideration of the last periodic report. This should include the number of requests for compensation that have been made, the number granted and the amounts ordered and actually provided in each case;

(b) Rehabilitation programmes provided to victims, including medical and psychological assistance;

(c) The procedures in place for obtaining rehabilitation and compensation for victims of torture and their families. Please indicate whether those procedures are also available to non-citizens.

Article 15

15. With reference to the Committee's previous concluding observations (para. 11), please provide updated information on steps taken to ensure, in practice, that confessions obtained under torture and ill-treatment are inadmissible in courts, in all cases, in line with article 38 (2) of the Constitution, article 319 (1) of the Code of Criminal Procedure as well as article 15 of the Convention. Please provide data on the number of confessions that were not admitted into evidence based on article 319 (1) of the Code of Criminal Procedure on the grounds that they were made under compulsion, torture or threat, or after prolonged arrest or detention (see CCPR/C/JPN/CO/6, para. 18). Please also provide data on the number of complaints concerning interrogations filed with the public prosecutor by suspects and their defence counsel and the number that have resulted in investigation and prosecution, since the consideration of the State party's last periodic report.

Article 16

16. With reference to the Committee's previous concluding observations (para. 13), please provide information on measures taken to improve the conditions of detention, including access to health care, and to increase the capacities of penal institutions, including women's prisons. What steps have been taken to improve monitoring mechanisms on the use of restraining devices such as Type II handcuffs and straitjackets?

17. With reference to the Committee's previous concluding observations (para. 14), please provide information on measures taken to limit the use of solitary confinement as a measure of last resort, for as short a time as possible under strict supervision and with the possibility for judicial review. Please provide specific and disaggregated data on the use and conditions of solitary confinement.

18. In the light of the Committee's previous concluding observations (para. 15), please provide information on the measures taken to ensure that the regime governing the detention of prisoners on death row does not amount to cruel, inhuman or degrading

treatment or punishment, inter alia, by giving death row inmates and their families reasonable advance notice of the scheduled date and time of an execution and introducing a mandatory system of review in capital cases, with suspensive effect, following a conviction for a capital crime at first instance. Please provide data on death row inmates, disaggregated by sex, age, ethnicity and offence (see CCPR/C/JPN/CO/6, para. 13).

19. With reference to the Committee's previous concluding observations (para. 9), please provide information about the measures taken to bring all legislation and practices relating to the detention and deportation of immigrants or asylum seekers into line with the Convention. Please provide data on the total number of asylum seekers detained by the State party since the consideration of the State party's last periodic report as well as the number of asylum seekers granted alternatives to detention during the same period. Please indicate any measures taken in efforts to ensure: [7]

(a) That detention is a last resort and for the shortest appropriate period and only if the existing alternatives to administrative detention have been duly considered;

(b) That immigrants are not subject to ill-treatment during their deportation, including prolonged detention;

(c) That the Immigration Detention Facilities Visiting Committee is able to effectively monitor immigration detention centres and can receive and review complaints from immigrants or asylum seekers in detention.

20. In the light of the Committee's previous concluding observations (para. 22) relating to the issue of involuntary hospitalization, please provide information on (CCPR/C/JPN/CO/6, para. 17):

(a) Measures taken to establish effective judicial control over involuntary treatment and placement as well effective appeals mechanisms. Please describe the legal safeguards available in all places of deprivation of liberty, including psychiatric and social care institutions;

(b) Investigations undertaken into incidents where excessive use of such restrictive measures has resulted in injuries to the patient and the outcomes;

(c) Community-based or alternative services for persons with mental disabilities available in Japan.

21. In the light of the Committee's previous concluding observations (para. 23), please indicate whether the State party explicitly prohibits, by law, corporal punishment and all forms of degrading treatment of children in all settings, including at home and in alternative care settings.

Other issues

22. In the light of the Committee's previous concluding observations (para. 26) and the commitment made by the State party in the context of the universal periodic review (see A/HRC/22/14/Add.1, para. 147.9), please provide information on any measures taken to become a party to the Optional Protocol to the Convention. In addition, please indicate whether the State party has taken action to accept the competence of the Committee under article 22 of the Convention.

[7] See A/HRC/17/33/Add.3, para. 82; CCPR/C/JPN/CO/6, para. 19; CERD/C/JPN/CO/7-9, para. 23.

23. Please provide information on any efforts taken by the State party to consider ratifying the core United Nations human rights treaties, including the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities.[8]

24. Please provide updated information on the measures taken by the State party to respond to any threats of terrorism. Please also describe if, and how, those anti-terrorism measures have affected human rights safeguards in law and in practice, and how the State party has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). Please describe the relevant training given to law enforcement officers; the number and types of persons convicted under the anti-terrorism legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of those complaints.

General information regarding other measures and developments relating to the implementation of the Convention in the State party

25. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the previous report that implement the provisions of the Convention or the Committee's recommendations. This may include institutional developments, plans or programmes, including resources allocated, and statistical data or any other information that the State party considers relevant.

[8] See CAT/C/JPN/CO/2, para. 27; HRI/CORE/JPN/2012, chap. II.A.